IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4317 OF 2007

Ninad Tanaji Pawar .. Petitioner

v/s

The Deputy Director of Education,
Pune Division, Pune & Ors. .. Respondents

Mr. S.G. Kudle for the petitioner.

Mr.C.R. Sonawane, A.G.P. for respondents no.1 to 3.

Mr.R.G. Ketkar for respondent no.4.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 29TH OCTOBER 2007

**P.C.** :

1. Heard.

2. By this petition, the petitioner seeks two reliefs. He firstly prays for quashing of an advertisement dated 23rd December 2006 whereby the respondent no.4 school invited applications for the post of Shikshak Sevaks (Assistant Teachers) on the ground that the advertisement could not have been issued as the model code of conduct was in force in view of then ensuing Zilla Parishad elections. By the second prayer, the petitioner prays for issuance of a mandamus to the

respondent no.1 to fill up all vacant posts with reference to the roster point. In our view, the two prayers are inconsistent with each other and are mutually exclusive. By the first prayer, the petitioner prays for quashing of the advertisement for filling up the posts and by the second prayer the petitioner prays that mandamus be issued to fill up the posts. Such mutually exclusive prayers cannot be entertained.

3. As regards the first prayer, the elections to the Zilla Parishad has nothing to do with the filling up of the posts of teachers in a private educational school. In our view, merely because the school is receiving aid from the government does not prevent it from making appointments or issuing advertisement for selection to the posts of teachers as the elections to the Zilla Parishad are going on. In any event, no statute, rule or a notification of the State Election was pointed out to us prohibiting issuance of an advertisement for filling up posts of teachers in a private school. The advertisement dated 23rd December 2006 therefore cannot be quashed on the ground that model code of conduct regarding Zilla Parishad elections was in force.

4. As regards the second prayer, it was submitted that the respondent no.4 has schools in more than four

districts and therefore roster point required approval of Deputy Director of Education. It was contended that the roster point was sanctioned by the Education Officer and not by the Deputy Director of Education. We have perused the affidavit filed by the government and also the annexure-1 thereto. We have also perused the affidavit filed by the respondent no.4. From the said affidavits and in particular from annexure-1 to the affidavit filed by the government, as well as the affidavit of the respondent no.4, it is clear that the roster point regarding reservation of backward class was not only sanctioned by the Education Officer, but was also sanctioned by the Deputy Director of Education on 20th October 2006. Thus, the contention that the roster point regarding reservation for the backward class was not approved by the Deputy Director of Education is factually incorrect.

5. In the circumstances, there is no merit in the petition which is hereby rejected summarily.

(D.G. KARNIK, J.) (S.B. MHASE, J.)